

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. CR-10-72-D/CIV-13-974-D
)	
REGINALD A. LANCASTER,)	
)	
Defendant.)	

ORDER

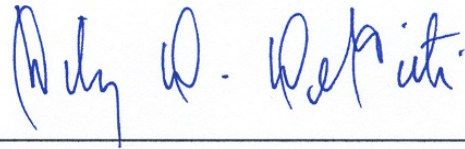
Defendant, a prisoner appearing pro se, has filed a request under 28 U.S.C. § 2253 for a certificate of appealability (“COA”) to appeal the denial of his § 2255 motion to vacate his sentence [Doc. No. 139]. Defendant is entitled to a COA only upon making a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2); *Milton v. Miller*, 812 F.3d 1252, 1263 (10th Cir. 2016). Defendant can make such a showing by demonstrating that the issues he seeks to raise are debatable among jurists of reason or adequate to deserve further proceedings. *Id.*; *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). Having reviewed the motion and the underlying record, the Court finds Defendant has not made this requisite showing. Accordingly, his request for a Certificate of Appealability is **DENIED**.

Defendant also seeks to proceed in forma pauperis and has attached an affidavit in support of such request to his Notice of Appeal [Doc. No. 135-1]. Although 28

U.S.C. § 1915(b) of the in forma pauperis statute does not apply to this action, *United States v. Simmonds*, 111 F.3d 737 (10th Cir. 1997), both §§ 1915(a)(1) and (a)(3) do apply. See *Rivera v. Mullin*, 446 F. App'x 130, 132 n. 3 (10th Cir. 2011) (unpublished). Accordingly, to proceed on appeal without prepayment of fees or security therefor, Defendant must show his appeal is taken in good faith and he is financially unable to pay the requisite amount. *McIntosh v. United States Parole Comm'n*, 115 F.3d 809, 812 (10th Cir. 1997); 28 U.S.C. §§ 1915(a)(1) & (3). A good faith appeal requires the presentation of a “reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.” *Carvalho v. Pugh*, 177 F.3d 1177, 1179 (10th Cir.1999).

The Court has carefully reviewed Defendant’s earlier briefs and contentions, as well as his present motion. Upon such review, it concludes Defendant has failed to present a reasoned, nonfrivolous argument for appeal and thus the appeal is not taken in good faith. Therefore, the Court finds Defendant is not entitled to proceed without payment of the filing fee, and his Motion to Proceed In Forma Pauperis is **DENIED**. Defendant is advised that unless the requisite filing fee is paid in full to the Clerk of this Court within **twenty (20) days** of the date of this Order, the action may be subject to dismissal.

IT IS SO ORDERED this 4th day of April, 2016.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE